

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
LAFAYETTE DIVISION**

**PRO DRIVE OUTBOARDS, LLC**

**Plaintiff**

**Case No. 6:18-cv-01241**

**VS.**

**Judge MICHAEL J. JUNEAU**

**CRUZANI, INC. F/K/A US**

**HIGHLAND, INC., ET AL**

**Defendant**

**Magistrate CAROL B. WHITEHURST**

**Judge**

**JURY TRIAL REQUESTED**

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**MEMORANDUM OF LAW IN SUPPORT OF  
DEFENDANT US HIGHLAND, INC.'S § 1404(a)  
MOTION TO TRANSFER VENUE, SUBJECT TO DEFENDANT'S 12(B)(6) MOTION  
TO DISMISS**

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COMES NOW, Defendant US HIGHLAND, INC. (hereinafter referred to as "Highland") and, subject to Defendant's 12(b)(6) Motion to Dismiss, files this § 1404(a) Motion to Transfer Venue, and in support thereof, would respectfully show unto this Court as follows:

Under 28 U.S.C. § 1404(a), a district court may transfer any civil action to any other district or division where it might have been brought. The United States Supreme Court has held that, when a defendant files motion to transfer venue under § 1404(a) based on a forum-selection clause, a district court should transfer the case unless extraordinary circumstances unrelated to the convenience of the parties clearly disfavors a transfer. *Atl. Marine Constr. Co. v. United States Dist. Court*, 134 S. Ct. 568, 575 (2013). In the present matter, the Exclusive Distribution Agreement ("Agreement") that forms the basis of the present dispute contains the following provision:

5. Governing Law: Venue: Arbitration. This agreement shall be governed by, and construed in accordance with, the substantive laws of the State of Oklahoma. Actions and proceedings litigated in connection with this Agreement, if any, shall be conducted

exclusively in the state and federal courts located in the State of Oklahoma.<sup>1</sup>

Therefore, the Court should transfer the present matter to the United States District Court for the Western District of Oklahoma, which is a venue upon which the parties agreed.

The United States Supreme Court has held that a valid forum-selection clause should be given controlling weight in all but the most exceptional cases. *Atl. Marine*, 134 S. Ct. at 581. In instances like the present one, where a plaintiff has defied the forum-selection clause, the plaintiff's choice of forum merits no weight. *See Id.* Rather, as the party defying the forum-selection clause, the plaintiff bears the burden of establishing that transfer to the forum for which the parties bargained is unwarranted. *Id.* Additionally, a court evaluating a defendant's § 1404(a) motion to transfer based on a forum-selection clause should not consider arguments about the parties' private interests. *Id.* at 582. When parties agree to a forum-selection clause, they waive the right to challenge the preselected forum as inconvenient or less convenient for themselves or their witnesses, or their pursuit of the litigation. *Id.*

In the present matter, the Agreement that forms the basis of the present dispute required that suit be filed in the state and federal courts of the State of Oklahoma; accordingly, Plaintiff's choice of venue merits no weight. Plaintiff has waived the right to challenge United States District Court for the Western District of Oklahoma as inconvenient or less convenient. Therefore, the Court should transfer the present matter to the United States District Court for the Western District of Oklahoma.

Respectfully Submitted,

**LAW OFFICE OF DICK "DAVE" KNADLER, LLC**

/s/ Dick "Dave" Knadler  
DICK "DAVE" KNADLER (#27829)  
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<sup>1</sup> See attached Exhibit "A", Exclusive Distribution Agreement for Shallow Water Marine Applications.

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and

**THE STEIDLEY LAW FIRM**

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**ATTORNEYS FOR DEFENDANT  
CRUZANI F/K/A US HIGHLAND, INC.**

**CERTIFICATE OF SERVICE**

I hereby certify that I have, this 6<sup>th</sup> day of March, 2019, provided all parties with a copy of the above and foregoing pleading by means of the CM/ECF electronic filing system.

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/s/ Dick "Dave" Knadler

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